

JURISDICTIONAL SCOPE OF THE WATER COURT

ARTICLE VII, SECTION 8 OF MONTANA CONSTITUTION

- District court judges must be elected by the qualified electors as provided by law
- Interpreted to allow retired judges to be recalled for temporary active service by the chief justice of the Montana Supreme Court (*Wilcox v. Dist. Ct.*, 208 Mont. 351, 678 P.2d 209 (1984))
- To date, there has been no challenge to the constitutional jurisdiction of Montana's water judges

STATUTORY PROVISIONS REGARDING WATER JUDGES

- Montana is divided into four water divisions as follows: Yellowstone River, Missouri River Below Mouth of the Marias River, Upper Missouri River, and Clark Fork/Kootenai Rivers. MCA 3-7-102
- A water judge is designated for each water division by a majority vote of a committee composed of district court judges within each water division. MCA 3-7-201
- A water judge must be a district court judge or retired district court judge of a judicial district wholly or partly within the water division. MCA 3-7-201
- The jurisdiction to determine and interpret existing water rights is exercised exclusively through the water divisions. MCA 3-7-501(1)
- A water judge may not preside over matters regarding existing water rights beyond the boundaries of the judge's water division. MCA 3-7-501(2)
- Whenever a question arises regarding which water judge shall preside over adjudication of a matter, the question shall be settled by the water judges involved. MCA 3-7-502
- The water judge in each water division or the chief water judge may appoint one or more water masters. MCA 3-7-301
- Water masters shall assist the water judges in the adjudication and may, if approved by the chief water judge, assist district court judges in dissatisfied water users complaints and judicial enforcement matters brought by DNRC. MCA 3-7-311

The statutes were amended to provide for a chief water judge as follows:

- A chief water judge shall be appointed by the chief justice of the Montana Supreme Court. MCA 3-7-221
- The chief water judge's duties are to administer the adjudication of existing water rights by coordinating with DNRC to assure information is _____

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expeditiously and properly compiled and transferred to the water judge in each water division and to assure the water judge in each water division moves without unreasonable delay to enter the required preliminary decree. Chief water judge may hear hearings on cases certified by DNRC. MCA 3-7-223

- Chief justice of Montana Supreme Court may appoint the chief water judge to serve as a water judge for one of the water divisions. MCA 3-7-224
- With regard to manners within the chief water judge's jurisdiction, the judge has the same powers as a district judge. MCA 3-7-224

CONCERNS RAISED REGARDING CONSTITUTIONAL JURISDICTION OF WATER JUDGES

- Commentators have suggested that even the use of district court judges who are not specifically elected as water judges may be unconstitutional. Donald D. MacIntyre, "The Adjudication of Montana's Waters – A Blueprint For Improving the Judicial Structure" 49 MT L. Rev. 211 (1988)
- A study commissioned by the Montana Water Policy Committee recognized that if a water judge truly acts as a district court judge, the selection of a water judge by a judicial committee appears to conflict with the constitution but recommended the legislature not consider a massive overhaul or dismantling of the Water Court system until the Montana Supreme Court rules on the issue. Saunders, Snyder, Ross & Dickson, P.C., "Evaluation of Montana's Water Rights Adjudication Process" Prepared for Montana Water Policy Committee (1988) (pp. 35-40)

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